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Investigation by the Department of its own	)	
motion as to the propriety of the rates and	)	
charges set forth in the following tariffs:	)	
M.D.T.E. No. 14, filed with the Department )		D.T.E.98-15
on January 16, 1998 to become effective )		Phase II
February 14, 1998, by New England )		
Telephone and Telegraph Company )		
d/b/a Bell Atlantic- Massachusetts )		
	)	

## I. INTRODUCTION

CTC and TRA strongly urge the Department to apply the wholesale discount approach used by the Department in its order in the *Consolidated Arbitrations*, Phase 2 and by CTC and AT&T in this proceeding. Specifically, the appropriate wholesale discount, where the reseller uses Bell Atlantic-Massachusetts ("BA-MA"), is no less than 25% off retail rates. BA-MA's proposed permanent wholesale discount of only 15.6% does not comply with the Telecommunications Act of 1996 (the "Act") because the discount does not reflect all the costs that BA-MA can avoid as a

<sup>1</sup> TRA is a national industry association representing more than 650 members, including CTC, engaged in the provision of value-added interexchange, local, wireless, Internet and enhanced services. TRA was created, and carries the ongoing mandate to foster and promote the development of competition in telecommunication markets.

result of resale. Such a significant difference represents a departure from the Phase II Order and sound economic principles, which BA-MA has failed to justify. Further, BA-MA's proposal is inconsistent with sound principles of economics and that proposal will all but eradicate the resale market in Massachusetts. No one has disputed the reasonableness of the public policy of promoting competition. The Department should not allow a drastic change in wholesale discounts that will certainly stifle resale-based competition. Congress required resale both because it provides direct benefits to consumers and because it is a stepping stone towards facilities-based competition.

## **II. THE ECONOMIC AND POLICY UNDERPINNINGS OF THE DEPARTMENT'S DETERMINATION OF INTERIM WHOLESALE DISCOUNT RATES REMAIN SOUND.**

### **A. The Stay of the FCC's Ruling Is of No Moment**

The record in this proceeding shows clearly that sound economics support the Department's determinations regarding the interim wholesale discount. *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-84, Phase 2 (1996) (hereinafter the "Phase 2 Order"). Although the Department was largely following directions of the Federal Communications Commission's ("FCC") Local Competition Order ("LCO"), that certain jurisdictional limitations related to the LCO were later developed in no way requires that the Department change its methodology in determining the level of the discount

<sup>2</sup>. The Federal Appeals Court decision did not address the substance of the LCO, relative to the methodology of determining wholesale discounts, so the Department is free to use whatever method

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<sup>2</sup> The basic legal holding of that decision was that the FCC could not mandate a particular methodology upon states for determination of a wholesale discount. Review of the Department's decision shows that the Department's efforts were consistent with the Act and survive regardless of the Court's jurisdictional ruling with respect to the LCO.

it determines is consistent with the Act. Further, the basis of the Phase 2 Order is not critical **B** especially now. The Department certainly had latitude as to the means of determining and applying the discount and it sought to make its determination consistent with the language and policy objectives of the Act. Because those objectives remain controlling, no argument by BA-MA to change the Department's approach can be deemed compelling. Regarding the request posed by the Bench as to the basis of the Department's Phase 2 Order [Tr. 4:637], it must be observed that the Department and all parties recognized that the Department was not bound to the directives of the LCO. *Consolidated Arbitrations*, Tr. 10/21/96, p. 6.

Regardless of the Department's use of certain approaches and presumptions established in the LCO, neither the Federal Court Stay nor BA-MA's presentation in this proceeding show those approaches and presumptions to be unfounded. In fact, the evidence strongly supports the Phase 2 Order approach. This brief discusses how each aspect of the Phase 2 Order is proper and necessary to ensure fair competition and is supported by sound economic principles. Exh. CTC-Phase II-1, pp.4-5. In short, the Department's determinations in the Phase 2 Order have strong economic and policy support, wholly independent of the LCO. Further, the Department has a sufficient record to determine permanent wholesale discount levels, substantially similar to those set by the Phase 2 Order and to those suggested by Dr. Kelley and Mr. Goodrich. In any event, the record here is both (a) sufficient to support such continued level of wholesale discount and (b) insufficient to answer the manifest problems with BA-MA's approach that yields a considerably lower discount.

**B. Local Competition And Other Salutory Goals Will Be Advanced By Maintaining Wholesale Discounts At Least Equal To Those Set In The Phase 2 Order.**

The Department established, inter alia, the 24.99% wholesale discount for resellers using BA-MA operator service in December, 1996. Now, almost two years later only about 2% of the lines in Massachusetts are resold. Exh. CTC-Phase II-1, p. 11; Exh. CTC-Phase II-4-1. This disappointing status is so despite many benefits resellers bring to customers.

Resellers provide a variety of benefits to customers. Resellers can provide consumers with pricing plans and customer service that the incumbent does not provide. For example, CTC provides its customers with 24-hour customer service, dedicated account representatives, consolidated billing for multiple products, a single point of contact for resolving customer problems and the planning and evolution of their telecommunications systems. In effect, CTC provides a system integration function for customers who, while significant users of telecommunications services, are too small to provide that function for themselves. Historically, BA-MA has not provided these services to customers of this size. In addition, to the extent resellers are more efficient than the incumbent in providing retailing functions, they can provide the consumers with lower prices. CTC's prices are typically five percent below those of BA-MA, and in addition provide enhanced customer service and billing capabilities. This reflects CTC's ability to provide retail services with lower costs than BA-MA.

Exh. CTC-Phase II-1, pp. 6-7.

Given the slow penetration of resale competition, one might reasonably conclude that the interim discount has not been inappropriately large. Indeed, the record shows no evidence of inefficient resellers in the marketplace. Exh. CTC-Phase II-1, p. 11. Thus, one of BA-MA's major concerns appears to be wholly unfounded. Another factor to consider, relative to the existing interim discount, is that a number of resellers have entered the market and built organizations in reliance on the level of the discount. Exh. CTC-Phase II-1, p. 4. The Phase 2 Order was well reasoned and sound. Therefore, it was reasonable for resellers to enter the market and invest based on the results of that proceeding.

CTC and TRA do not suggest that the Department is bound to the discount level set in the Phase 2 Order. It is a relevant factor, however, that businesses and jobs have been established with a consideration of that discount level and any significant change may well have a correspondingly

significant and adverse change upon those entities' business plans and ability to survive.

Further, resale should be fostered because it also engenders the longer-term benefit of increased facilities-based competition as envisioned by the Telecom Act. Exh. CTC-Phase II-1, p. 9; Exh. ATT-Phase II-1, p. 8. As explained by Dr. Kelley:

One role of resale is to reduce barriers to entry into local markets. The ILECs have had decades to construct their networks. Constructing the facilities needed to compete with these embedded networks will take many years and a great deal of capital. Resale allows new entrants to build a customer bases while they are constructing their networks, with the result that facilities can be used more efficiently. Facilities-based entry is therefore more likely if there is a resale stepping stone.

Exh. CTC-Phase II-1, p. 6.

An additional benefit to consumers and even BA-MA is that a healthy resale market will actually expand the overall market for telecommunication services and yield a more efficient consumption. Exh. CTC-Phase II-1, p. 7. With such an expanded market, the negative effects of competition on BA-MA will be small or non-existent. Like AT&T in long distance, BA-MA will likely see expanded service and revenues and remain a viable competitor despite having a reduced market share. This will allow avoidance of workforce dislocations. Exh. CTC-Phase II-1, p. 12.

The record provides compelling evidence that a reduction in the wholesale discount will further delay achievement of meaningful competition. Exh. CTC-Phase II-1, p.11. Therefore, the Department is correct to ask what is the cost of being wrong on the level of the wholesale discount. If the Department errs on the side of too high a discount the societal cost is low: possibly (a) some small increment of less than optimally efficient resellers and (b) some small financial ramifications upon BA-MA. Regarding (a) no evidence of that occurring to date is available. Regarding (b) BA-MA is clearly in a much better position than the fledgling reseller competitors both to withstand some market inefficiencies and to seek remedy therefor. Tr. 3:361-362. As it is in this case, BA-MA controls the pertinent data and is able to make the necessary showing in the future if the

discount levels set in this proceeding are much too high. Exh. ATT-Phase II-1, p. 26. On the other hand, if the resale discount is too low, not only do Massachusetts consumers lose the benefit of immediate resale competition, they will not enjoy the benefits of facilities-based competition as soon. The Department should not lose sight of the fact there is such meager competition now, almost three years after passage of the Telecom Act. Further, the financial impact on newer, smaller resellers of having to pay BA-MA's retailing costs will certainly be proportionally more significant, as the reseller will need to overcome any market inertia of customer migration from BA-MA and they probably will be unable to compete if wholesale discount rates set now are inadequate.

### **III. THE INTERVENORS' APPROACH TO DETERMINING THE WHOLESALE DISCOUNT IS SOUND, COMPLIES WITH THE ACT AND, UNLIKE THE BA-MA PROPOSAL, WILL ALLOW THE DEVELOPMENT OF LOCAL COMPETITION.**

#### **A. The Intervenor's Basic Approach To Determination Of A Wholesale Discount Is Much More Appropriate Than BA-MA's.**

This case has had considerable debate about the proper standard for determination of the wholesale discount. While it may appear to be a difficult question analytically, from a practical perspective of ensuring a fair discount rate, there is only one choice: the standard must ensure that resellers pay none of BA-MA's retailing costs. Specifically, in determining the wholesale discount, it is necessary to identify **all the costs of retailing to be avoided, not just the costs that BA-MA chooses to avoid.** Exh. CTC-Phase II-1, p.10. To that end, in the Phase 2 Order the Department adopted the analytical approach of determining the costs that an entirely wholesale firm, without any retail operations, would avoid. Phase 2 Order p. 13.

This is the approach that the Intervenor's have adopted in their analyses. BA-MA's criticism that it will not be an exclusively wholesale company any time soon is entirely misses the point. This

analytical approach ensures that retail costs are removed from the wholesale price - as Congress intended, based on TELRIC, given the discount is intended to be permanent as a result of this proceeding. Tr. 3:349-355. In eliminating any retail costs from the wholesale price, this approach yields a result equivalent to a competitive market result. As Dr. Ordoover explained, a competitive wholesale market would result in a wholesale price devoid of any retail costs. Exh. ATT-Phase II-1, p.28. Those costs are extraneous to wholesale service, so competition among wholesalers would ultimately eliminate such costs from the price to resellers. Even BA-MA agrees that for resellers to absorb BA-MA's retailing costs would constitute a market distortion. Tr. 4:444-445. Nonetheless, BA-MA would have the Department leave in the price paid by resellers those fixed costs that BA-MA already incurred, even if those costs relate to retail service and either contribute nothing to wholesale service, or would be less if only used for wholesale service.

One significant problem with the BA-MA approach, as discussed below relative to indirect costs, is that it is too susceptible to being skewed by BA-MA's self interest in restricting competition. Where BA-MA essentially states what costs it avoids, and claims that fixed and mixed use costs remain, it is inevitable that avoided costs will be understated. Essentially BA-MA argues that the wholesale discount should only consider those costs that BA-MA actually and immediately avoids. That approach yields a corrupt result with resellers paying significant costs of BA-MA's retailing effort. Dr. Kelley explained:

Some costs may not be avoided today only because resale is a relatively new activity. In the long run, an efficient firm would shed all of its avoidable costs. More significantly, adoption of Dr. Taylor's position could result in resellers subsidizing BA-MA inefficiencies. If BA-MA is incurring excessive (i.e., inefficient) costs for retailing operations and chooses not to avoid them, resellers - and their customers - must pay the price. Moreover, it would be inappropriate to base the discount on Dr. Taylor's avoided cost standard because that would make the discount a function of BA-MA's internal decision-making process or inertia in responding to market mechanisms. That is, BA-MA could choose for strategic or anticompetitive reasons to continue to incur costs that a competitive firm would not incur. The Phase II standard avoids this problem.

Another flaw in the BA-MA approach is that it only includes in the wholesale discount costs that immediately vary with volume. Dr. Taylor's discussion of volume insensitive costs is, at best, stained. Economists recognize that in the long run, all costs are variable. An efficient firm that is in both the wholesale and retail markets will shed both fixed and variable costs as it loses retail customers. It is clear that as BA-MA reduces its retail function, it would reduce many costs. Exh. ATT-Phase II-1, p.23. As discussed above, BA-MA's approach of considering indirect costs generally unavoidable, leaves costs in the wholesale price that provide no value to wholesale services.

The Department should not retreat from the sound approach of the "wholesale only" assumption for purposes of identifying all retailing costs and ensuring that such costs are not imposed on resellers. To do otherwise will result in market distortions that will delay or deny the benefits of vibrant resale competition and to delay facilities based competition to Massachusetts consumers.

**B. The Intervenors' Discount Calculations Are Most Reasonable And Do Not Result In Market Distortions.**

Each of CTC and AT&T sponsored witnesses who performed their own analyses of a proper level of the wholesale discount.

<sup>3</sup> CTC's witness, Dr. Kelley, performed an analysis that resulted in a 27.68% wholesale discount

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<sup>3</sup> Obviously, the intervenors did not have direct access to all the pertinent data, so in many cases they had to use the same data as used by BA-MA. That does not mean that in all cases the witness agreed with such use of data or the particular mode of calculation. CTC's brief focuses upon the wholesale discount applicable where the reseller does not provide its own operator services, as CTC currently uses the BA-MA operator services. AT&T makes

<sup>4</sup> where the reseller used BA-MA's operator services. The AT&T study similarly yielded a 25.83% wholesale discount where the reseller used BA-MA's operator services. The differences between these two studies with closely related outcomes and the BA-MA analysis are as follows:

Intervenors treat all BA-MA advertising expenses as avoided

<sup>5</sup>; BA-MA treats none as avoided.

Intervenors treat all BA-MA product development expenses as avoided.

Intervenors treat a portion of indirect costs as avoided; BA-MA treats only a small percentage as avoided.

Intervenors use unseparated data as the starting point of the calculation.

1. Intervenors' studies consider depreciation and amortization expenses, as well as return and taxes, applicable to general support assets; BA-MA does not.

<sup>6</sup>

# **1. All BA-MA's Advertising Expenses Must Be Deemed Avoided.**

The record provides several facts that show unequivocally that all BA-MA's advertising expenses should be considered as avoided for purposes of calculating the wholesale discount. First, no one disputes that BA-MA is the only supplier of local telephone service and that BA-MA has no competition for such wholesale service now, or for the reasonably near future. Thus, the primary reason for BA-MA to advertise in the wholesale context does not exist.

Second, where BA-MA does provide wholesale service (i.e. interstate access) without

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considerable efforts regarding the costs of operator services, but CTC will not initially address such matters.

<sup>4</sup> Dr. Kelley identified two corrections to his study that would both lead to a higher wholesale discount, than the 26.21% specified in his direct testimony. Tr. 4:612-613.

<sup>5</sup> This brief will use the word avoided to denote those expenses that add up to an amount that is converted to the wholesale discount percentage. This is also done to avoid the game of semantics played by BA-MA witness Taylor, where he suggests that the intervenors improperly consider the avoidable, rather than the avoided, costs.

<sup>6</sup> AT&T also treated some operating taxes as avoided and Dr. Kelley agreed with that approach. This further supports a higher discount.

competition, it spends no money at all on advertising. Exh. CTC-Phase II-1, p. 17; Tr. 3:333. BA-MA's argument that it would change and perform general, wholesale advertising in the future is wholly speculative (and dubious) simply cannot and should not be relied upon as a basis for charging BA-MA's competitors with a portion of the costs BA-MA incurs to reduce those competitors' market share. Further, BA-MA claims to be unable to separate wholesale and retail advertising costs. Exh. CTC-BA-6-2. Where BA-MA controls such expenditures, the wholesale price should not be included any advertising costs until BA-MA can assure exclusion of retail costs.

Further, on cross-examination, BA-MA's own witness admitted a significant uncertainty as to the direction of future BA-MA advertising. BA-MA's assertion is too speculative and its extreme follow-on argument (treating no advertising costs as avoided) is too costly for society in terms of lost competitive opportunities for the Department to treat anything less than 100% of all advertising costs as avoided. In fact, BA-MA has made no attempt to show that any of its advertising now is directed to the wholesale. Rather, it seems clear that most of BA-MA's advertising is geared toward promoting BA-MA's brand and its retail presence and retail products. Exh. ATT-Phase II- 1, p. 33. Where BA-MA cannot guarantee it will cease branded advertising in the future, (Tr. 4:520) the Department should not allow wholesale pricing scheme that forces resellers to support the competitive retailing efforts of BA-MA.

Perhaps even more important is that resellers and end-user customers obtain no benefit from BA-MA's promotional advertising. Exh. ATT-Phase II- 1, p. 33. In fact, CTC's Resale Agreement with BA-MA bars the reseller from making any use of the BA-MA name, so CTC and similarly situated resellers cannot take an benefit from BA-MA advertising. Exh. CTC-Phase II-1, p. 17. Actually, such advertising as now conducted only harms CLECs and requires that they spend their own money on advertising. It is very troubling that CLECs could be forced to fund the efforts of

BA-MA to squash such CLECs. As the Department correctly pointed out in its Phase II order, BA-MA will have 100% of the wholesale market and resellers will determine what is the proper amount to advertise for maximum efficiency. BA-MA simply has no need to advertise for its wholesale activities. Nor is there any record evidence that it has done so. Ironically, resellers' own advertising, the expense of which resellers bear, will in fact stimulate demand for BA-MA's wholesale services.

Again, the cost of being wrong on whether resellers should have to pay for BA-MA's advertising, with the likely effect of delaying or suppressing competition, is much greater than the indeterminate (if even existing) cost of a very small increment of a too great wholesale discount.

## **2. The Department's Previous Determination As To Product Development Expenses Remains The Most Reasonable**

In the Phase 2 Order, the Department found that although certain BA-MA product development expenses would still be incurred in a wholesale environment, BA-MA had not sufficiently specified those costs. Here, CTC does not dispute that BA-MA will have some very minor expenses applicable to wholesale that are contained in the product development category (e.g. filing of wholesale tariffs). However, BA-MA has not shown how over \$30,000,000 (BA-MA's proposed amount of unavoided product development expense) of such costs would continue to be necessary for wholesale purposes. Rather, as the Department found in the Phase 2 Order (p. 21), BA-MA's assertions regarding the use of product development efforts for wholesale purposes are just "vague conjecture".

Most of the expenses in question relate to market research and development. The record here is clear that resellers themselves would be the most efficient entities to be making such efforts because of their close relationship with the customers. Tr. 4:606. The record further shows that resellers would be devoting considerable efforts to this area and that they would share the product

of such labors with BA-MA, which would eliminate or substantially reduce any need by BA-MA to make such expenditures. Resellers would essentially become the product development arm of BA-MA. *Id.*

Further, in the context of BA-MA remaining in the retail business, as well as the wholesale business, a significant part of product development costs provide no benefit to resellers because BA-MA does not make such products available for resale. That circumstance already exists, at the least, for voicemail and appears likely to exist for BA-MA's new generation of competitive products, including ADSL products. Exh. CTC-BA-MA-3-4; Tr. 4:620. As Dr. Kelley explained:

...to take the example you raised with Mr. Goodrich, the second-generation ISDN. There won't be a second-generation ISDN. The first was a pretty big failure. But the second-generation ISDN will be ADSL. So, for example, I imagine right now Bell Atlantic is spending some time and effort on product development for ADSL, but at the same time they have petitioned regulators to deregulate that service so they do not have to make it available to resellers. It's a specific part of their petition.

In a hypothetical world where you really did have a wholesale firm, that kind of thing wouldn't happen. They would be cooperating with their retailers to get new services out in the market.

Tr. 4:620

As to those costs that might have some relationship to the wholesale operation, BA-MA's claim rings hollow that it provided sufficient proof of such expenses. These costs, such as those relating to the development of wholesale tariffs, are so discrete, they are quantifiable. Yet BA-MA has chosen to retain them in an amorphous category of expenses merely to deem the entire category as unavoidable. BA-MA merely states that it will have to forecast demand and identify product requirements. It fails to make specific segregation of expenses on a much more specific basis that would be the proper first step in considering an expense unavoidable. BA-MA, however, will be able to avoid such costs because those costs can be picked up by resellers. BA-MA's proposed tariff

actually requires that resellers do such forecasting and it is clear they will identify the products customers want. (Tr.4:606). Therefore, BA-MA has provided wholly insufficient evidence of those costs remaining even with resale.

In short, BA-MA has failed to show how any but quite minor product development expenses are not avoided in a wholesale environment. Further, such costs, whenever relating to wholesale also appear to concern retail. BA-MA's claims to be unable to separate the two types of expenses. Exh. CTC-BAMA-6-2; Exh. CTC-BAMA-3-4. There are very strong arguments that BA-MA should have a heavy burden of proof in such regards. Exh. ATT-Phase II-1, p. 24. In any event, BA-MA has made a wholly inadequate showing. Therefore, again the Department should include 100% of product development expenses in the wholesale discount to avoid understating the proper wholesale discount.

### **3. Significant Indirect Costs Must Be Recognized As Avoided.**

As the Department recognized in its Phase 2 Order with respect to the treatment of indirect costs, a rational determination of expenses as avoided or unavoided by means of a detailed account by account analysis is essentially "unachievable". Phase 2 Order, p. 26. Because the costs are indirect, their causality is quite difficult to determine. Some of the general administrative and support costs will remain despite customers moving from retail to wholesale service, but it is clear that some of such costs will be shed. As the Department found in its Phase 2 Order, it is not credible for BA-MA to argue that virtually all executive expense remains despite a significant decrease in responsibilities: "[I]n a wholesale environment, a number of the responsibilities of management will be shed (e.g., advertising, and billing and collection for hundreds of thousands of accounts). Thus, with fewer responsibilities to discharge, fewer positions would be required in a resale environment." Phase 2 Order, p. 26. Therefore, the methodology used by Dr. Kelley and Mr. Goodrich, *i.e.* use

of an avoided indirect expense ratio equal to the ratio of avoided direct costs to total direct costs, is the most reasonable approach for the circumstance. Exh. ATT-Phase II-3, p. 37. One very significant point, recognized by the Department and the Intervenors, but altogether ignored by BA-MA, is that indirect expenses may continue, but the level thereof will change. Therefore the Department's Phase 2 reasoning ("it would be extremely difficult to hypothesize what percentage of executive salaries, legal expenses and so on would be avoidable if NYNEX operated solely in a wholesale environment") pertains now, whether or not the Department uses the analytical method of the wholesale only company.

#### **4. Use of Total BA-MA Costs, Rather Than Separated Costs, Is Appropriate**

CTC and AT&T each used total BA-MA costs, rather than separated costs in their calculations of the proper wholesale discount. Exh. ATT-Phase II-3, pp. 26-30; Exh. CTC-Phase II-1, p. 19. The intervenors used this approach for several reasons. First, costs are avoided whether the somewhat arbitrary separations process assigns them to interstate or intrastate jurisdiction. Where the 1996 Act requires the discount to be calculated upon avoided costs, the Department should not employ a method that fails to include all avoided costs in the discount calculation. Without consideration of the total avoided costs, BA-MA will be able to recover costs twice B in charges for each of intrastate and interstate services. Exh. CTC-Phase I-1, p. 19; Exh. ATT-Phase II-3, p. 28. Only if the FCC lowers access charges, will BA-MA suffer any financial detriment. If that were to ever occur, BA-MA could presumably return to the Department and seek an adjustment in the wholesale discount to reflect that change in circumstances. Also, it is important that the Department consider the effect upon the competitive market. Unless, the Department calculates the discount upon total costs, thereby reflecting all costs that wholesale allows the ILEC

to avoid, a reseller will have to pay the ILEC an amount that does not reflect full avoided costs. Even if the reseller is as efficient as the ILEC, it will then lose money and ultimately be unable to compete.

The Department correctly recognized these facts in the Phase 2 Order (p. 32) when it stated that the jurisdictional distribution of those costs is not relevant to determining an avoided costs ratio (as distinguished from a revenue requirement determination). This aspect of the avoided cost discount is certainly unaffected by the legal status of the LCO and BA-MA has presented no other changes in circumstances or other facts to merit a change in the Department's decision in the Phase 2 Order. Also, neither the Telecommunications Act nor its federal implementation tool, the LCO, contemplated or explicitly set out the distinction between intra and interstate jurisdictional separations in developing the avoided cost methodology.

**5. Depreciation and Amortization and Return Relating to Operator Systems and General Support Assets Must Be Considered in Establishing a Wholesale Discount**

ATT correctly demonstrates in its testimony that a portion of depreciation and amortization expenses and return associated with operator services and general support assets is properly treated as avoided. Exh. ATT-Phase II-3, p. 35. CTC's expert witness, Dr. Kelley, agreed. Tr. 4:613. The rationale is the same as that employed by the Department in the Phase 2 Order, namely, that with a movement from retail to wholesale, many of BA-MA's tasks will be shed. Consequently, its workforce could be reduced (at least relative to what is required for wholesale) and the general support assets relating to those employees that are no longer needed, would similarly be avoided. Once again, the Intervenor's propose a result consistent with the Department's Phase 2 Order. There the Department held that failure to consider some depreciation and amortization expense as avoided would "confer a permanent advantage on [BA-MA] and that for purposes of determining the proper

wholesale rate, it was necessary to treat already incurred, volume insensitive costs as avoidable. The same rationale applies to return and taxes on the operator and general support assets and the Department so held previously. *Consolidated Arbitrations*, Phase 2-A, p. 7.

## CONCLUSION

For all the reasons set forth herein, CTC and TRA strongly urge the Department adopt the wholesale discounts as proposed by CTC, namely 27.68% for resellers using BA-MA's operator services.

<sup>7</sup> This is a conservative discount level in that a higher discount is supportable. The methodology is consistent with sound economic principles and the Department's Phase 2 Order. Alternately, CTC and TRA, after their review and consideration of BA-MA's argument, believe the Department has sufficient reason to adhere to the Phase II Order and make the interim discount rate permanent. However, any reduction below 25% for resellers using BA-MA's operator services, would be a significant departure from the Phase 2 methodology and would cause a significant reduction in local competition to the detriment of Massachusetts consumers. Also, independent of the policy determination of the discount level sufficient to stimulate a competitive environment, any reduction in the discount level will result in resellers paying costs that support BA-MA's retail efforts. All parties seem to agree that such a result would be an improper distortion of the market. In any event, the Department must reject BA-MA's proposed resale discount as unsupported by record evidence or sound economic principles or public policy.

Respectfully submitted,  
CTC COMMUNICATIONS CORP.  
TELECOMMUNICATIONS  
RESELLERS ASSOCIATION

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<sup>7</sup> The wholesale discount for resellers providing their own operator services can be calculated therefrom.

Each by its Counsel

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Dated: October 13, 1998

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**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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**D.T.E.98-15  
Phase II**

**INITIAL BRIEF OF CTC COMMUNICATIONS CORP. AND  
TELECOMMUNICATIONS RESELLERS ASSOCIATION  
REGARDING RESALE DISCOUNT ISSUES**

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